General Average - an introduction

This guest post about General Average is written by Alexander Robertson from Robertson’s Cargo Consultancy (Pty.) Limited

GENERAL AVERAGE

In the marine insurance industry claims are divided into two categories, particular average and general average. General average claims relate to losses directly related to a sacrifice made as a result of a catastrophe at sea, all other losses are known as particular average losses.

The definition of a general average is:

Rule A. “There is a General Average Act, WHEN and ONLY when, any EXTRAORDINARY SACRIFICE or EXPENDITURE is INTENTIONALLY and REASONABLY made or incurred for THE COMMON SAFETY for the purpose of PRESERVING FROM PERIL the property involved in a COMMON MARITIME ADVENTURE”.

There is a lot of misconception that for a general average to be declared, cargo has to be jettisoned. this is not the case. There can be any type of incident where the master of the vessel has to take action to make an extraordinary sacrifice for the common safety of the vessel, and all that is within her.

The extraordinary sacrifice could be having to cut a hole in the side of the ship and then fighting a fire through that hole. Any cargo which may be damaged as a direct result of this fire fighting will be considered an extraordinary sacrifice, but that which is burnt from the fire will not be considered a sacrifice but will be a particular average claim against insurers.
There can also be the cost of running the engines at high speed to remove her from being aground. The extra fuel which is used plus the extensive damage which this can cause the engines for running at these high speeds will all be considered as a sacrifice in terms of a general average as if it were not for the engines running at the high speed using the excessive fuel plus the resulting damage to the engines, the voyage would not have been saved.

It must be remembered that the voyage has to be saved. In the event of a shipping sinking no general average will be declared as the voyage was not “preserved from peril”. Should there have been the successful salvaging of cargo from the vessel prior to her becoming a total loss, there can be declared a salvage award to the salvors as was the case with the “MSC Napoli” back in January 2007 when she was purposely run aground to save her. Cargo was discharged with the help of barges and salvors. There was the successful salvaging of a large portion of the cargo. The ship later sank off the coast after splitting in two but the salvors claimed a 60% salvage award for the successful salvaging of the cargo.

Whenever a general average is declared there are numerous documents which need to be completed by the cargo owners. No cargo will be released to any party without the authorisation from the ship’s agent or owners representative at the following ports of call.

The following is an extract from the manual which I have written:

**GENERAL AVERAGE PRACTICE**

1. If a vessel arrives at port having made a General Average Act during the voyage the vessel is said to have arrived “UNDER AVERAGE”.
2. The Master of the vessel will advise the owners or ship’s agents as soon as possible to allow for arrangements to be made for the discharge of cargo and the necessary security for General Average Contributions to be obtained from the ‘cargo owners’. **NOTE:** Until adequate security is lodged to the satisfaction of the ship’s owner(s) there will be a lien on the cargo.
3. The ship’s owner(s) will appoint an Average Adjuster who will make a rough calculation in order to estimate the percentage of contribution which the ship’s owner(s) may demand.
4. Surveyors may be called in by the ship’s owner(s) and/or cargo underwriters to assess any damage to the cargo and to protect the interests of the various parties. **NOTE:** The damage to cargo must be properly assessed as this will form an allowance in the actual
General Average adjustment.

5. If the General Average proves to be small the ship's owner(s) may dispense with formality and adopt one of two options:-

(A) Approach the Hull underwriters and obtain agreement from them to settle without contribution from other parties. In turn, the Cargo underwriters will settle any General Average sacrifice under direct liability.

This practice is one of pure convenience which is based on economies of scale and which has no legal sanction.

(B) The ship's owner(s) may release the cargo under a General Average GUARANTEE secured from cargo insurers

There are many forms of guarantee but, in its most basic form, a guarantee merely states that the insurers will guarantee the due payment to the ship's owner(s) of any contribution for general average and/or salvage and/or any other charges which were properly incurred and chargeable against the cargo in return for the immediate delivery of the cargo to the consignees. The vessel's name, voyage and date, and a brief description of the goods insured will be included in the guarantee.

**NOTE:** It is not required to include the value of the goods or any monetary amount in the guarantee.

Should the underwriters find that the cargo has been insured for less than its contributory value to the General Average, the underwriter may, in turn, require counter guarantees in respect of the difference from the cargo owner.

1. In most cases of General Average the ship's owner(s) will release the cargo on payment by the consignees of a General Average Deposit under a General Average Bond. The amount of the deposit will usually be a percentage of the actual net value of the property at the termination of the venture. See Rule XVII & XXII of the York Antwerp Rules.

2. In the event of there being more than one General Average incident the latest incident will be the first to be adjusted.
# GENERAL AVERAGE - FORMS REQUIRED

<table>
<thead>
<tr>
<th>FORM</th>
<th>PURPOSE</th>
<th>SIGNED BY</th>
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<tbody>
<tr>
<td><strong>AVERAGE BOND</strong></td>
<td>It confers an obligation on the signatory to contribute a percentage of the value of the cargo saved</td>
<td>The owner of the cargo, the consignee and, possibly, by the shipper. A counter-signature may also be required from the mariner insurer.</td>
</tr>
<tr>
<td><strong>VALUATION FORM</strong></td>
<td>Details the contributory value of the cargo.</td>
<td>The owner of the cargo, consignee and, possibly, the shipper.</td>
</tr>
<tr>
<td><strong>NON-SEPARATION AGREEMENT</strong></td>
<td>It is a declaration by the signatory agreeing to have his/her cargo share in the costs which may arise later at a port of refuge and after he/she has taken delivery of the cargo, for example, after transshipment onto another vessel.</td>
<td>The owner of the cargo, consignee, and, possibly, the shipper.</td>
</tr>
<tr>
<td><strong>GENERAL AVERAGE DEPOSIT RECEIPT</strong></td>
<td>It is a receipt for the deposit which is lodged in lieu of a General Average Guarantee from which the contribution will be deducted.</td>
<td>The original receipt must be surrendered on request in order to effect final payment of the General Average contribution.</td>
</tr>
<tr>
<td><strong>GENERAL AVERAGE GUARANTEE</strong></td>
<td>It is an undertaking by the Marine Insurer to pay the amount according to the General Average Adjustment directly to the community of interests involved in the General Average.</td>
<td>The Marine Insurer.</td>
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**About the Author of this post**: Alexander Robertson has over 35 years Maritime Insurance experience including Lloyd’s of London SA cargo survey and claims agent. He is also a member of the Maritime Law Association of SA and currently the only marine insurance expert who is accredited with TETA as both an assessor and moderator. He has written the only cargo insurance workshop manual which is endorsed by the Insurance Institute of South Africa as well as the South African marine insurance market.

He is also a fully accredited trainer by the SAICC in Incoterms ® 2010 rules. His company Robertson’s Cargo Consultancy (Pty) Ltd has been established for 6 years being involved in cargo insurance and Incoterms training and consultancy work which includes recoveries from liable carriers and surveying of damaged cargo.

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like to post on this blog, please email it to me..